IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Cr.M.P.(M) No.862 of 2007

Decided on:December 10, 2007.

State of Himachal Pradesh ***…Petitioner.***

VERSUS

Dhani Ram ***….Respondent.***

Coram

The Hon'ble Mr.Justice Kuldip Singh, Judge.

Whether approved for reporting?[1]No

For the Petitioner: **Mr.M.L.Chauhan, Addl.A.G.**

For the respondent:

Kuldip Singh, Judge (Oral)

This is an application of the State seeking leave to file appeal against the judgment dated 18.8.2007 passed by learned Judicial Magistrate 1st Class, Solan in Criminal Case No.371/2/2004 acquitting the respondent under Sections 279, 337 I.P.C. and Section 181 of the Motor Vehicles Act, 1988.

2. The facts, in brief, are that on 17.9.2003 HC Hari Singh and Constable Krishan Kumar received information that an accident has taken place near *Sukki Johri* and the victims had been brought to CHC Dharampur. On this information, HC Hari Singh and Constable Krishan Kumar reached CHC Dharampur where PW-1 Dalip Singh and PW-2 Hira Devi, husband and wife, were found fit for making statements. Accordingly, statement of PW-1 Dalip Singh was recorded under Section 154 Cr.P.C. He has stated that he and his

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Whether the reporters of the local papers may be allowed to see the judgment? Yes

wife were standing outside the premises of M/s.Priya Auto Store at Kumarhatti, Ramesh and Sunder were also there. Scooter No.HIA 5027 was parked outside the premises, at about 10.45 A.M. vehicle No.HP-13-0403 came from Dharampur side which was being driven in a high speed and hit him as well as his wife and the scooter which was parked there. Both of them sustained injuries. They were taken to CHC Dharampur. Scooter was also damaged. The accident took place due to rash and negligent driving of Mahindra Pick Up No.HP-13-0403. On this F.I.R. was registered and after completion of investigation, challan was put up, notice of accusation was put to the respondent. The prosecution has examined 13 witnesses, the statement of respondent was recorded under Section 313 Cr.P.C. but he did not lead any evidence in defence. The learned trial Magistrate acquitted the respondent, hence, this application.

3. Heard the learned Additional Advocate General. The defence of the respondent is that the accident has not taken place due to rash and negligent driving on his part but it occurred due to sudden puncturing of the front tyre of the Pick Up van. This defence was put to PW-1 Dalip Singh complainant. PW-2 Hira Devi has admitted that the Mahindra Pick Up van was going up hill. She has also stated that she does not know why Mahindra Pick Up van, which was being driven by the accused, immediately burst. PW-7 Ashok Kumar has stated that driver side tyre of the vehicle was punctured. He changed the tyre with the help of driver and another person. PW-9 Kamal Krishan motor mechanic has examined the Mahindra Pick Up van and proved report Ext.PW-9/A. In cross examination, he has

admitted that front tyre of the vehicle was punctured and in that situation brake does not apply. PW-13 HC Hari Singh is the Investigating Officer. He has stated that it has come in investigation that Mahindra Pick Up van hit the scooter and scooter hit the victims PW-1 and PW-2 and they sustained injuries. The learned trial Magistrate on the basis of material on record has returned a finding that respondent was not at fault for the accident. The licence of the respondent was valid up to 8.4.2003. The learned Magistrate has also recorded a finding that no evidence has been led that respondent was not having HMV licence for driving. The learned Magistrate has taken a possible view from the material on record for acquitting the respondent. No case has been made out for grant of leave to file appeal against the impugned judgment. Hence, leave to appeal refused and the petition is dismissed.

December 10, 2007 ***(Kuldip Singh), J.***

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